
BZA -1717
T-MOBILE USA, INC.
Appeal of the opinion of APC Staff

STAFF REPORT
May 18 2006

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REQUEST MADE:

T-Mobile Central, LLC., an affiliate of T-Mobile USA, Inc., represented by Todd Leeth of Hoeppner, Wagner & Evans, is appealing the opinion of APC staff stating that a primary communications tower is not permitted on a multi-family residential structure located at the southwest corner of Waldron Street and Stadium Avenue in West Lafayette. The letter of opinion is dated March 30, 2006.

BACKGROUND:

T-Mobile, represented by Steve Carr of PDH, Inc., a site acquisition company which provides land for cell phone towers, first approached APC staff member Kathy Lind in June 2005 investigating whether a cell phone tower would be allowed on a residential structure as a faux chimney. Kathy Lind raised the question at staff meeting on June 21, 2005. After that meeting, a letter was written to Steve Carr dated June 23, 2005 explaining staff's position that a "stealth" primary communications tower would not be allowed in a residential zone. Mr. Carr responded with an email dated July 6, 2005 in which he misunderstood the letter sent by staff. He stated that T-Mobile would be allowed to erect a primary communications tower at the proposed location through "an administrative approval process with the Tippecanoe County Area Plan Commission." Kathy Lind by email then responded and pointed out that Mr. Carr was incorrect that he had not interpreted her letter accurately. She concluded the email by stating that any further questions should be referred to the West Lafayette City Engineer's office.

The issue was then discussed further at the Administrative Officers' meeting in July 2005 regarding the interpretation of the section in the Unified Zoning Ordinance which deals with primary communications towers. At that time it was decided that if there was a question regarding cell phone towers in West Lafayette, the decision would be made by the West Lafayette City Engineer.

In late 2005, petitioner's legal representative, based on advice from Kathy Lind and decision made at the Administrative Officers' meeting, contacted Robert Bauman, West Lafayette City Attorney and arranged a meeting to further discuss primary communications towers in West Lafayette.

On February 1, 2006, a meeting was held regarding the proposed cell phone tower with John Burns, APC staff member, Margy Deverall, APC Assistant Director, Robert Bauman, West Lafayette City Attorney, David Buck, West Lafayette City Engineer, Todd Leeth, attorney representing T-Mobile and Steve Carr, a representative from PDH, Inc.

The definitions of primary and accessory communications towers were discussed as well as the reason why a cell phone tower could not be located in the R3W district.

Todd Leeth requested a written statement regarding staff's opinion about the placement of the tower. That letter, dated March 30, 2006 written by John Burns, outlines the Unified Zoning Ordinance requirements for primary and accessory communications towers and is attached to this staff report.

PETITIONER'S STATEMENT OF APPEAL:

"Through our discussions with the Area Plan Commission, it has been determined by your office that our client's proposal is in violation of the Unified Zoning Ordinance...T-Mobile, USA, Inc., appeals the decision and determination that the proposal is a "Primary Communications Tower" under the Unified Zoning Ordinance.

March 30, 2006
Ref. No.: 06-202

HEOPNER, WAGNER & EVANS LLP
ATTENTION: TODD A. LEETH
103 EAST LINCOLNWAY
PO BOX 2357
VALPARAISO, IN 46384-2357

RE: Primary Communications Towers

Dear Mr. Leeth:

From our meeting on February 1, 2006, it is my understanding that T-Mobile would like to erect a faux chimney on a multi-family residential structure located on Waldron Street in West Lafayette to house a communications tower. At your request, I am writing this letter to help explain why the placement of a communications tower on a residentially zoned lot with an apartment building is a violation of the Unified Zoning Ordinance (UZO) of Tippecanoe County, Indiana.

Primary Communications Tower is defined in the UZO as a structure situated in a nonresidential zone that is intended for transmitting or receiving television, radio, or telephone communicates, including those used exclusively for dispatch communications if the tower is the primary use. According to the Permitted Use Table (UZO 3-1), these towers are permitted by right in the Industrial zones and with a special exception in the Agricultural and Agricultural/Wooded zones. Because this area of West Lafayette is zoned residentially, the tower would not be permitted. The only way this tower could be placed on this property is if it were rezoned. Unfortunately, rezoning this land would make the apartments non-conforming because they are not permitted in industrial or rural zones.

Additionally, ***Accessory Use*** is defined in the UZO as “an accessory building or subordinate use, not designed or used for human habitation, which serves a function incidental to and associated with that of the primary use on the same lot. A communications tower for T-Mobile on this lot could not be considered accessory to the existing residential units because it would serve all T-Mobile customers, not just people living the in multi-family building.

If you have any other questions regarding this matter, please feel free to contact me.

John Burns

Planner

cc: West Lafayette City Engineers Office